

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELAINA THOMAS,

Plaintiff,

v.

Civil Case No. 19-13230
Honorable Linda V. Parker

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

**OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE’S
SEPTEMBER 1, 2020 REPORT AND RECOMMENDATION [ECF NO. 15]
AND (2) GRANTING DEFENDANT’S MOTION TO DISMISS
[ECF NO. 12]**

On November 1, 2019, Plaintiff Elaina Thomas filed this *pro se* lawsuit in which she appears to challenge the Commissioner of Social Security’s (“Commissioner”) decision denying her application for social security benefits under the Social Security Act. (ECF No. 1.) That decision is pending before the Appeals Council. (ECF No. 12-1 at Pg. ID 134.) This Court referred the matter to Magistrate Judge Patricia T. Morris for all pretrial proceedings, including a hearing and determination of all non-dispositive matters pursuant to 28 U.S.C. §636(b)(1)(A) and/or a report and recommendation (“R&R”) on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). (ECF No. 5.) The

Commissioner subsequently filed a Motion to Dismiss (ECF No. 12) and Plaintiff responded (ECF No. 14).

On September 1, 2020, Magistrate Judge Morris issued an R&R recommending that this Court grant the Commissioner's motion. (ECF No. 15.) In the R&R, Magistrate Judge Morris explains that the Court does not have subject matter jurisdiction to review Plaintiff's claims because the Commissioner's decision is not final and "Plaintiff has not made any claims implicating constitutional violations that would justify waiving the exhaustion requirement." (*Id.* at Pg. ID 188-89.) At the conclusion, Magistrate Judge Morris advises the parties that they may object to and seek review of the R&R within 14 days of service upon them. (*Id.* at Pg. ID 190.) She further specifically advises the parties that "[f]ailure to file specific objections constitutes a waiver of any further right to appeal." (*Id.* (citing *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981))) Neither party filed objections to the R&R and the time to do so has expired.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Morris. The Court therefore adopts the R&R.

Accordingly,

IT IS ORDERED that Defendant's Motion to Dismiss (ECF No. 12) is
GRANTED.

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: October 12, 2020

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, October 12, 2020, by electronic and/or U.S. First Class mail.

s/ R. Loury
Case Manager